Office Supreme Court, U.S.
FILED
JUN 3 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1728

In the Supreme Court of the United States

OCTOBER TERM, 1982

DAVID METZGER TRUST, JACOB METZGER, TRUSTEE, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether, in determining whether a stock redemption is "not essentially equivalent to a dividend" under Section 302(b)(1) of the Internal Revenue Code, evidence of discord between related stockholders may override the rules of Section 318(a) of the Internal Revenue Code requiring the attribution of stock ownership for purposes of such a determination.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. B-2 to B-26) is reported at 693 F.2d 459. The opinion of the Tax Court (Pet. App. A-1 to A-54) is reported at 76 T.C. 42.

JURISDICTION

The judgment of the court of appeals (Pet. App. B-1) was entered on December 13, 1982. The court denied a petition for rehearing with suggestion for rehearing en banc on January 26, 1983 (Pet. App. C-1). The petition for a writ of certiorari was filed on April 25, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The pertinent facts are undisputed and may be summarized as follows: Petitioner David Metzger Trust was created by David Metzger in 1942 to benefit his wife, Nora, as life

income beneficiary and his three children, Jacob, Catherine, and Cecelia, as equal remaindermen. Jacob was named as trustee. Four years later, David Metzger incorporated the family business as Metzger Dairies, Inc. ("MDI"). Petitioner trust later became a shareholder of MDI (Pet. App. A-3 to A-4, B-3 to B-4).

After David Metzger's death in 1953, his son Jacob assumed managerial control over MDI, installing himself as chairman of the board, and his son David Metzger, II, as president. Both of Jacob's sisters, Catherine and Cecelia, maintained positions as directors of MDI. During the initial years after Jacob assumed control of MDI, it enjoyed financial success and distributed dividends to its shareholders: Jacob, Catherine, Cecelia, trusts established for each of them, Nora, and petitioner. During the 1960's, however, corporate earnings declined and MDI failed to distribute dividends. As a result, Catherine and Cecelia became angry with Jacob and accused him of mismanaging MDI. During this period, disputes also arose with respect to Jacob's treatment of Catherine's son, Jacob's alleged mismanagement of petitioner's assets, the use of the family farm, the responsibility for Nora's care, and the terms of Nora's will (Pet. App. A-3 to A-6, B-3 to B-4).

The animosity between the Metzger children, Jacob, Catherine, and Cecelia, reached a high point in 1972. The family members then determined that MDI could no longer be operated as a family business. After lengthy negotiations, it was agreed that Jacob and his family would own MDI, that Catherine and her family would own two other family-owned corporations, and that Cecelia and her family would receive cash compensation for their interests. To accomplish this agreed objective, they devised the following plan: MDI would redeem all of its stock owned by Cecelia, Catherine and petitioner trust. Petitioner was included in

the planned redemption because, under the terms of the trust instrument, the stock it held in MDI would, upon the death of the life income beneficiary, Nora, pass in equal shares to the remaindermen who were attempting to separate their future business and personal relations (Pet. App. A-6 to A-7, B-4).

The parties stipulated that (1) the principal reason underlying the redemption of stock by MDI was the hatred and discord existing between Jacob, Catherine, and Cecelia; (2) the redemption was not principally or primarily motivated to realize a profit on their stock or to receive undistributed earnings from prior years; and (3) both before and after the redemption, Jacob, Catherine, and Cecelia would not have acted in concert or for the benefit of each other in connection with the redemption of stock of MDI, the business policies and operations of MDI, or otherwise (Pet. App. A-8).

As of January 1, 1973, MDI had outstanding 3,000 shares of common stock, owned as follows:

Stockholder	Number of Shares
Petitioner David Metzger Trust	420
Nora Metzger	420
Jacob Metzger	600
Trust for Jacob Metzger	120
Catherine Staacke	600
Trust for Catherine Staacke	120
Cecelia Jane Frew	600
Trust for Cecelia Jane Frew	120
Total	3,000

On or about January 22, 1973, the agreed-upon redemptions took place, and petitioner received $585,303.25 in full

payment for its 420 shares of MDI stock. After the redemption, the shares of MDI stock then outstanding were owned as follows:

Stockholder	Number of Shares
Jacob Metzger	600
Trust for Jacob Metzger	120
Trust for David Metzger II (son of Jacob Metzger)[1]	294
Trust for Nan Metzger (daughter of Jacob Metzger)	207
Total	1,221

(Pet. App. A-8 to A-9; B-4 to B-5; B-6 n.2).

On audit, the Commissioner determined that the distribution to petitioner in redemption of its MDI stock was essentially equivalent to a dividend, and taxable at ordinary income rates. In this proceeding brought by petitioner in the Tax Court for a redetermination of the resulting deficiency, the Tax Court, in a unanimous reviewed opinion, upheld the Commissioner's determination. The court held that, applying the stock attribution rules of Section 318(a) of the Internal Revenue Code of 1954 (26 U.S.C.), petitioner owned 100% of the stock of MDI both before and after the redemption. Following this Court's decision in *United States* v. *Davis*, 397 U.S. 301 (1970), the Tax Court held that the distribution was taxable to petitioner as a dividend.

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[1]The record does not indicate how the shares of MDI came to be owned by trusts for the children of Jacob after the redemption. It does establish, however, that all of the 2,280 shares owned by stockholders other than Jacob and the trust for Jacob prior to the redemption were redeemed. Presumably, therefore, these 501 shares were newly issued at or shortly after the redemption.

The court rejected petitioner's argument that hostility among its beneficiaries could override the statutory rules of Section 318 requiring the attribution of stock between related family members and entities (Pet. App. A-10 to A-30). The court appeals affirmed, holding that the Tax Court was "correct in refusing to take family discord into account in applying the [Section 318(a)] attribution rules" (Pet. App. B-18; footnote omitted).

ARGUMENT

1. The courts below correctly held that, in determining whether a distribution is "essentially equivalent to a dividend" under Section 302(b)(1), the existence of family discord does not override the rules of Section 318 requiring the attribution of stock ownership between family members and certain entities.

The taxation of redemptions of corporate stock is governed by Section 302 of the 1954 Code. Under Section 302(d), the proceeds that a shareholder receives from a redemption of stock are treated as a distribution taxable under Section 301, and thus as a dividend (taxable as ordinary income) to the extent the proceeds are out of corporate earnings and profits, unless the redemption meets one of the specific exceptions contained in Section 302(b). If the redemption comes within one of the exceptions, it is treated under Section 302(a) "as a distribution in part or full payment in exchange for the stock," and any gain resulting may be eligible for capital gains treatment.

Under Section 302(b)(1), upon which the petitioner relies, a redemption qualifies for exchange treatment "if the redemption is not essentially equivalent to a dividend." A redemption is not equivalent to a dividend only if it "result[s] in a meaningful reduction of the shareholder's proportionate interest in the corporation." *United States* v. *Davis*, 397 U.S. 301, 313 (1970). See also S. Rep. No. 1622,

83d Cong., 2d Sess. 234 (1954); Treasury Regulations on Income Tax, 26 C.F.R. 1.302-2(a).

In determining whether a taxpayer who has had his corporate stock redeemed has reduced his interest in the corporation, the 1954 Code requires that the taxpayer be treated as owning stock that is in fact owned by certain related individuals and entities. 26 U.S.C. 302(c)(1) and 318(a); Pet. App. D-2 to D-3. See *United States* v. *Davis, supra*. Under Section 318(a)(1) ("family" attribution), a shareholder is considered as owning the stock owned by certain members of his family—*i.e.*, his spouse, parents, children and grandchildren. Under Section 318(a)(2) and (3) ("entity" attribution), ownership of stock is attributed to partnerships, controlled corporations, estates and trusts from their respective partners, shareholders, and beneficiaries, and vice versa. The policy underlying these rules is that where a taxpayer has had part or all of his stock redeemed, but where close relatives or certain related entities continue to own stock, the taxpayer may nevertheless be able to maintain a significant interest in or control over the corporation. See B. Bittker & J. Eustice, *Federal Income Taxation of Corporations and Shareholders*, para. 9.21 (4th ed. 1979). See also Pet. App. A-21 to A-22.

Thus, before the MDI stock redemption, in addition to the 420 shares of MDI stock actually owned by petitioner trust, under the entity attribution rule of Section 318(a)(3), petitioner was deemed to own the stock owned actually or constructively by its beneficiaries, Nora, Jacob, Catherine and Cecelia, which included stock owned by other trusts of which they were beneficiaries. After the redemption, petitioner trust actually owned no shares of MDI, but, under Section 318(a)(3), it was deemed to own the stock owned actually or constructively by Jacob, which included stock owned by trusts for his children and attributed, first, to his

children and then to Jacob. As a result, both before and after the redemption, petitioner owned, either actually or constructively, all of the outstanding stock of MDI. Because there was thus no reduction in the petitioner trust's proportionate interest in MDI, the decision below correctly held that the redemption did not qualify for exchange treatment under Section 302(b)(1). In so ruling, the court below followed this Court's decision in *United States* v. *Davis*, 397 U.S. 301 (1970). There, this Court held that a redemption which, after application of the constructive ownership rules, "involves a sole stockholder who causes part of his shares to be redeemed by the corporation * * * is *always* 'essentially equivalent to a dividend' within the meaning of that phrase in 302(b)(1)" (*id.* at 307; emphasis added; footnote omitted).[2] In so holding, the Court concluded that the corporate purpose behind a redemption should play no role in determining divided equivalency under Section 302(b)(1). Accord: *Miele* v. *Commissioner*, 474 F.2d 1338 (3d Cir.), cert. denied, 414 U.S. 982 (1973). See also *id.* at 982-988 (Powell, Douglas, and Blackmun, JJ., dissenting). Thus, to the extent that the family feud demonstrates the bona fide business purpose of the corporate redemption, it is irrelevant under *Davis*.

2. Petititioner does not argue that the family hostility was a corporate business purpose for the redemption. Indeed, such an argument is foreclosed by *Davis*. Instead, it claims (Pet. 5-8) that because of the discord existing between the residuary beneficiaries, Jacob, Catherine and Cecelia, the constructive ownership rules of Section 318 attributing stock to it from its beneficiaries should be disregarded. If those rules were not applied, petitioner asserts,

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[2]Indeed, because petitioner trust was deemed to own 100% of the stock of MDI after the redemption, whatever its percentage ownership was before the redemption, the redemption could not have resulted in a diminution of its proportionate interest in MDI.

the redemption would not be essentially equivalent to a dividend, because it actually owned no shares of MDI after the redemption. In effect, petitioner argues that the stock attribution rules are mere presumptions, rebuttable upon evidence of family discord.

The courts below correctly rejected this contention. It is directly contrary to the statute, which unambiguously provides (in relevant part) that "[s]tock owned, directly or indirectly, by or for a beneficiary of a trust * * * *shall* be considered as owned by the trust * * *" (Section 318(a)(3)(B)), and provides no exception for reason of hostility between trust beneficiaries, or otherwise.[3]

Indeed, the legislative history of Sections 302 and 318 confirms that Congress intended that the constructive ownership rules would be fixed rules that would apply without regard to the subjective feelings of any of the individuals involved. Prior to enactment of the 1954 Code, there was no clear rule as to whether stock owned by related persons would be considered in determining the taxation of various corporate distributions and adjustments.[4] Congress

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[3]Congress has used rebuttable presumptions in numerous provisions in the Internal Revenue Code. See, *e.g.*, 26 U.S.C. 183(d), 533(a), 672(c) and 1056(d); 26 U.S.C. (& Supp. V) 341(c). If Congress had meant Section 318 to be a rebuttable presumption, it could easily have so provided. Nor can it be argued that Congress inadvertently overlooked providing an exception for family hostility. Section 318(a)(1) in terms states that an indiviudal shall be deemed to own stock owned by "his spouse (*other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance*)" (emphasis added). That the statute includes this specific exception shows that Congress considered the relevance of "family discord" and determined that it would have only a limited role in the application of the constructive ownership rules.

[4]Compare *Grimditch* v. *Commissioner*, 37 B.T.A. 402, 412 (1938) (taking into account stock owned by relatives) and *Estate of Blauner* v. *Commissioner*, 20 T.C.M. (CCH) 1279, 1284-1285 (1961) (same) with *Estate of Lukens* v. *Commissioner*, 246 F.2d 403, 407 (3d Cir. 1957)

addressed this problem in Section 318 of the 1954 Code, establishing definitive rules for the constructive ownership of stock which would, inter alia, allow certain determination of the tax consequences of redemptions. As the House Committee report accompanying the 1954 Code states:

> *Section 311* [Enacted as Section 318] *Attribution of ownership*
>
> Section 311 articulates the circumstances under which ownership of stock by one person shall for the purpose of the sections to which section 311 is specifically made applicable be attributed to such other person. The sections to which section 311 are applicable are the following: 302 * * *
>
> [N]o specific statutory guidance is at present provided for stock ownership in the area of corporate distributions and adjustments. As a result the administration of provisions such as section 115(g)(1) [now Section 302(b)(1)] of existing law has become clouded with uncertainty by reason of executive application of rules of attribution of ownership. *Your committee intends, through section 311, to remove these uncertainties by providing in the bill precise rules for attribution where this is appropriate.*

H.R. Rep. No. 1337, 83d Cong., 2d Sess. A96 (1954) (emphasis added). The committee report further stated, with regard to redemptions:

(refusing to consider stock owned by family members). In 1951, the Treasury Department proposed regulations which provided that stock owned by "closely related" persons would be considered in determining whether a redemption were taxable as a dividend, but left "closely related" undefined. 16 Fed. Reg. 10312 (1951) (26 C.F.R. 29.115-9). This proposed regulation was withdrawn after the enactment of the 1954 Code, which included specific stock attribution rules (19 Fed. Reg. 7159 (1954)).

> A distribution in complete redemption of a shareholder's stock will also result in capital gain. To prevent evasion of the complete redemption test a shareholder is considered as owning stock held by members of his immediate family, or by partnerships, corporations and trusts which he controls. At the present time a possible opportunity for tax avoidance results where redemptions are effected in the case of family-owned corporations. To prevent tax avoidance, but at the same time to provide *definitive rules* for the guidance of taxpayers, your committee has provided *precise standards* whereby under specific circumstances, a shareholder may be considered as owning stock held by members of his immediate family (or by partnerships, corporations, or trusts which he controls).

H.R. Rep. No. 1337, *supra*, at 36 (emphasis added). See also S. Rep. No. 1622, 83d Cong., 2d Sess. 45, 235-236, 252-254 (1954).

After reviewing this legislative history in *Davis* (see 397 U.S. at 307-311), the Court concluded that the constructive ownership rules were "designed to provide a clear cut answer to what would otherwise be a difficult tax question" (*id.* at 306). Although *Davis* did not involve allegations of "family hostility," this Court stated that the constructive ownership rules are to "be taken into account wherever ownership of stock was relevant" (*id.* at 307; emphasis added).

It would obviously provide neither "definitive rules" nor "precise standards" if the constructive ownership rules were, as petitioner contends, only presumptions rebuttable by a showing of the individuals' actual degree of disaffection and hostility. Quite to the contrary, such an interpretation would produce both serious administrative and tax planning problems. Although family members may feud, the state of such personal relationships is subject to change,

for such disputes may be settled.[5] But if a family dispute is later settled. the precise tax avoidance possibilities which Congress sought to eliminate in enacting the stock attribution rules would then exist. See H.R. Rep. No. 1337, *supra*, at 36; S. Rep. No. 1622, *supra*, at 45. As the court below stated (Pet. App. B-17 to B-18):

> Under the Trust's approach the Commissioner and the courts would be forced to highly case specific inquiries into elusive fact patterns. The pattern, intensity, and predicted duration of a family fight are difficult enough for the solomonic justice of our domestic relations courts. It is hardly the basis for a soundly administered tax policy. The fixity of the attribution rules then in this sense is not their weakness but their strength.

This same point has been made by Professor Surrey:

> [T]he burden on tax administration and tax planning would be almost intolerable if these assumptions [embodied in the constructive ownership rules] were treated only as presumptions, with the final issue depending on the particular factual situation.

Surrey, *Income Tax Problems of Corporations and Shareholders: American Law Institute Tax Project—American Bar Association Committee Study on Legislative Revision*, 14 Tax L. Rev. 1, 50-51 (1958).[6]

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[5]For example, it is not clear at what point in time the state of family relationship would be tested—when the redemption is planned, when it is executed, when the taxpayer's return is filed, when the return is audited, or when the matter is before the courts.

[6]Petitioner erroneously contends (Pet. 3, 8 n.4) that 26 C.F.R. 1.302-2(b) states that the constructive ownership rules of Section 318 can never be determinative of the taxation of a redemption. The regulation states that constructive ownership is a "fact" to be considered, but does not elaborate as to the significance of that fact. In all cases, the effect of the redemption upon the redeemed party's interest in the corporation is

3. Petitioner pricipally argues (Pet. 2, 5-8) that the decision below conflicts with *Robin Haft Trust* v. *Commissioner*, 510 F.2d 43 (1st Cir. 1975), rev'g 61 T.C. 398 (1973), supplemental opinion, 62 T.C. 145 (1974). That case dealt with the tax consequences of the redemption of the stock of four trusts which had been established for the four children of Burt and Marcia Haft by the children's maternal grandfather. At the time of the redemptions Burt and Marcia were undergoing an acrimonious divorce. Under the family attribution rules of Section 318(a)(1)(A), Burt's children were deemed to own the stock owned actually and constructively by Burt, and under the entity attribution rules of Section 318(a)(3)(B), each trust was deemed to own the stock owned actually and constructively by its beneficiary. Pursuant to these rules, the redemptions increased Burt's percentage interest in the corporation, and the percentage stock ownership of each of the four trusts also increased slightly after the redemptions.

The Commissioner accordingly determined that the redemptions were essentially equivalent to dividends. The Tax Court upheld the Commissioner, rejecting the trusts' argument that stock attribution should not be applied where family hostility is present. The court of appeals, however, reversed. It held that the Section 318 constructive ownership rules may be overcome with a showing of sufficient family discord. The court remanded the case to the Tax Court to make findings on "the existence of family discord"—the presumed breakdown of the father-child

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the critical test. In some instances, where there is no reduction in a taxpayer's 100% ownership, that fact will be determinative. In other cases—where there is a reduction in ownership—constructive ownership will be a factor that must be considered, but will not in itself be determinative. In any event, as the court of appeals observed (Pet. App. B-13), the language in the regulation antedates the decision in *Davis*.

relationship—which would tend "to negate the presumption that taxpayers would exert continuing control over the corporation despite the redemption" (510 F.2d at 48).[7]

In our view, *Haft Trust* was wrongly decided insofar as it holds that the stock attribution rules constitute mere presumptions that can be rebutted upon a showing of family discord. As we have pointed out (pages 8-10, *supra*), the court ignored the express statutory language of Section 318 mandating that persons in the specified relationships "shall" be considered as owning stock actually owned by another. Second, the court ignored the unambiguous statements in the pertinent committee reports that the constructive ownership rules were to provide "definitive rules" and "precise standards" for determining the taxation of redemptions. It is therefore plain that Congress intended that the attribution rules would apply without regard to subjective facts such as family hostility. Finally, the court failed to recognize the administrative and planning problems that would result if the taxation of each redemption turned on a wide range of subjective factors.

To be sure, *Haft Trust*'s analysis with respect to the role of family hostility in application of the stock attribution rules is at odds with that of the court below. Indeed, the court below explicitly rejected the *Haft Trust* rationale (see Pet. App. B-14 to B-15). There is nevertheless no conflict of decisions requiring resolution by this Court. It is clear that even under the reasoning of *Haft Trust*, the result in the instant case would not be affected.

Assuming arguendo that hostility between family members could, in appropriate circumstances, affect application of the stock attribution rules, there is no justification for overriding those rules here. Petitioner trust argues (Pet.

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[7]On remand, the case was settled and there is no subsequent opinion.

5-8) that because of the hostility between three of its beneficiaries (Jacob, Catherine and Cecelia), stock owned by Jacob after the redemption should not be attributed to it, and thus the redemption would have entirely eliminated its interest in MDI. But the stock attribution after the redemption in this case is not between even putatively hostile parties, as from the father to the children in *Haft Trust*, but rather from a beneficiary of the trust (Jacob) to the trust. Here, the only discord was between Jacob and his sisters, and the Commissioner did not seek to attribute stock ownership between them (see Pet. App. A-53 (Tannenwald, J., concurring)).[8] There is accordingly no reason for overriding the constructive ownership rules here because the premise of those rules—that Jacob and petitioner would tend to act in concert—is confirmed rather than refuted by the facts.[9] See *Niedermeyer* v. *Commissioner*, 535 F.2d 500, 501 (9th Cir.), cert. denied, 429 U.S. 1000 (1976) (hostility irrelevant to attribution which does not cross hostile lines). See also Pet. App. A-50 to A-53 (Tannenwald, J., concurring). Hence, there is no basis for assuming that the First Circuit would have decided the instant case in favor of petitioner. Accordingly, this case is not a proper vehicle for resolution of the broader question whether evidence of family hostility can override the stock attribution rules.

At all events, despite the conflict in analysis between *Haft Trust* and the other courts of appeals, we do not believe that the conflict warrants resolution by this Court at this time.

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[8]The court below acknowledged this fact, but stated that it "prefer[red] not to rely on it" (Pet. App. B-15 to B-16 n.13).

[9]Jacob was petitioner's sole trustee and had voted and controlled petitioner's MDI stock (Pet. App. A-4). In addition, as trustee, he had considerable power over both petitioner's income and corpus (see trust indenture, Stipulation of Facts, Exh. 4-D). In fact, Jacob had claimed the power to appoint to himself or others both the income and corpus of the petitioner, and threatened to disinherit his sisters by exercising that power (Stipulation of Facts, para. 32).

The decision in *Haft Trust* has not been followed by any other court.[10] Here, the Tax Court, in a reviewed decision without dissent, rejected the *Haft Trust* analysis, as did the court of appeals. Moreover, although the First Circuit in *Haft Trust* held that it might be possible for family discord to affect the application of the Section 318 constructive ownership rules, no court has held, after this Court's ruling in *Davis*, that in a particular case family hostility in fact overrode the operation of those rules.[11] Hence, it remains to be seen whether the First Circuit will limit *Haft Trust* to its own particular facts. Finally, we are advised by the Internal Revenue Service that the issue whether family hostility overrides the attribution rules in the context of a stock redemption is not of substantial administrative importance. At the present time, the issue has been raised in only six cases, consisting of one related group of four cases and one of two cases, involving a total of approximately $500,000 in revenue.[12] Plenary consideration by this Court is therefore not warranted at this time.

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[10]Petitioner wrongly contends (Pet. 8-9) that it is the "long-standing prevailing view of * * * *Davis*" that family discord may override the constructive rules of Section 318. The only court to so hold was the First Circuit in *Haft Trust*. In contrast, the Tax Court, a court of national jurisdiction, has expressly rejected that view on at least three occasions. See *Niedermeyer* v. *Commissioner*, 62 T.C. 280, 285-286 (1974), aff'd, 535 F.2d 500 (9th Cir.), cert. denied, 429 U.S. 1000 (1976); *Robin Haft Trust* v. *Commissioner*, 61 T.C. 398 (1973), rev'd, 510 F.2d 43 (1st Cir. 1975); and the instant case.

[11]Before *Davis*, the Tax Court appears to have taken the position that family hostility might affect application of the Section 318 attribution rules. See *Estate of Squier* v. *Commissioner*, 35 T.C. 950 (1961), non acq., 1978-2 Cum. Bull. 4, withdrawing acq. 1961-2 Cum. Bull. 5. The First Circuit in *Haft Trust* relied on *Squier*. See 510 F.2d at 46-48. See also *Parker* v. *Commissioner*, 20 T.C.M. (CCH) 893 (1961).

[12]We recognize that the constructive ownership rules of Section 318 apply (sometimes with modifications) to several 1954 Code sections in addition to Section 302. See Section 226(a)(2) of Pub. L. No. 97-248, 96 Stat. 491 (to be codified at 26 U.S.C. 304(c)(3)); 26 U.S.C. 306(b)(1)(A),

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 1983

382(a)(3), 856(d)(5), 958(b) and 6038(d)(1). In addition, constructive ownership rules similar to those in Section 318 appear in several other 1954 Code sections. See, *e.g.*, 26 U.S.C. 267(c), 544 and 554. Under the rationale of *Haft Trust*, the application of all those sections would be cast into doubt. Indeed, that precise argument was raised below by MDI, which contended that the stock attribution rules of Section 267 should not be applied to attribute Jacob's stock to Cecelia, because of their mutual hostility. The courts below rejected this contention. See Pet. App. A-42 to A-49, B-23 to B-26. Although this may give greater significance to the question involved at some future time, no other decision has yet dealt with the precise question in the context of these other statutes. But compare *Miller* v. *Commissioner*, 75 T.C. 182 (1980), holding that Section 267 applied so as to disallow the deduction of a loss on a sale between brothers despite the existence of great hostility between them.

DOJ-1983-06